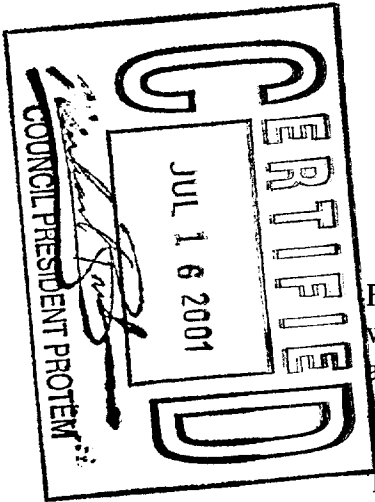


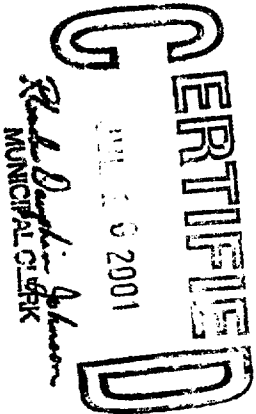
01-*R* -1061

**JACKIE PHIFER**  
through his attorney,  
**Brad W. Thomas, Esq.**  
**Warshauer, Woodruff & Thomas**  
**75 Fourteenth Street, Suite 2700**  
**Atlanta, Georgia 30309**



For bodily injuries alleged to have been sustained when a vehicle was struck by a Norfolk Southern train while attempting to cross an improperly designed intersection on February 11, 2001 at Hank Aaron Drive & McDonough Boulevard.

THIS ADVERSE REPORT IS  
APPROVED



BY:

ROSALIND RUBENS NEWELL  
DEPUTY CITY ATTORNEY

Robert, CogDCA

## CONSENT AGENDA

## PUBLIC SAFETY &amp;

LEGAL ADMINISTRATION COMMITTEE

DATE: 7/10/01

CHAIR: C.T. Martin

[illegible]

ADVISED BY  
CITY CONTROL JUL 16 2001



CITY OF ATLANTA  
OFFICE OF MUNICIPAL CLERK

RHONDA DAUPHIN JOHNSON, CMC  
MUNICIPAL CLERK

55 TRINITY AVENUE, S.W.  
SECOND FLOOR, EAST  
SUITE 2700  
ATLANTA, GEORGIA 30335  
(404) 330-6033  
FAX (404) 658-6103

July 27, 2001

Brad W. Thomas, Esq.  
Attorney at Law  
Warshauer, Woodruff & Thomas  
75 Fourteenth Street  
Suite 2700  
Atlanta, GA 30309

01-R-1061

RE: Jackie Phifer


Dear Attorney Thomas:

I sincerely regret that your client has been adversely affected by the circumstances raised in his/her claim for damages against the City of Atlanta. Your time and patience in this matter has been greatly appreciated.

However, I must notify you that the Atlanta City Council Adopted an Adverse Report on your client's claim at its regular meeting on July 16, 2001. In consultation with the City's Law Department, who conducted an investigation of the situation, the Council has determined that the City cannot accept responsibility for this matter and therefore cannot pay this claim.

If you desire any further information, please contact the City Attorney's Office/Claims Division at (404) 330-6400.

Yours very truly,

  
Rhonda Dauphin Johnson, CMC  
Municipal Clerk

cc: Claims Division/Law Department

**DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY**

Claim No. 01L0343

Date: June 27, 2001

Claimant /Victim JACKIE PHIFER  
BY: (Atty) (Ins. Co.) Brad W. Thomas, Esq., WARSHAUER, WOODRUFF & THOMAS  
Address: 75 Fourteenth Street, NE, Suite 2700, Atlanta, Georgia 30309-3645  
Subrogation:            Claim for Property damage \$            Bodily Injury \$ unspecified  
Date of Notice: 5/1/01 Method: Written, Proper X Improper             
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X  
Date of Occurrence 2/11/01 Place: Capital Avenue & McDonough Boulevard  
Department PUBLIC WORKS Division Traffic and Transportation Services  
Employee involved            Disciplinary Action:           

NATURE OF CLAIM: Claimant alleges that he sustained bodily injuries when he was struck by a Norfolk Southern train while attempting to cross an improperly designed intersection at the above referenced location. However, an investigation determined that the claimant was cited for "failure to stop at a railroad crossing signal". Moreover, the laying out and construction of city streets is a governmental function and the City is protected by sovereign immunity as set forth in O.C.G.A §36-33-1.

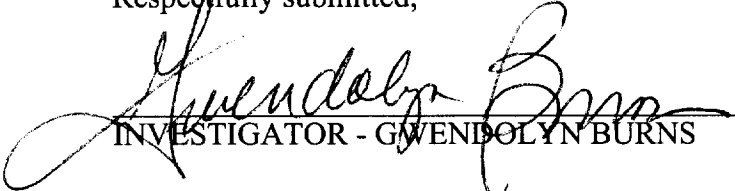
**INVESTIGATION:**

Statements: City employee            Claimant            Others            Written            Oral             
Pictures            Diagrams            Reports: Police            Dept Report            Other X  
Traffic citations issued: City Driver            Claimant Driver             
Citation disposition: City Driver            Claimant Driver           


**BASIS OF RECOMMENDATION:**

Function: Governmental X Ministerial             
Improper Notice            More than Six Months            Other X Damages reasonable             
City not involved            Offer rejected            Compromise settlement             
Repair/replacement by Ins. Co.            Repair/replacement by City Forces             
Claimant Negligent X City Negligent            Joint            Claim Abandoned           


Respectfully submitted,

  
INVESTIGATOR - GWENDOLYN BURNS

**RECOMMENDATION:**

Pay \$            Adverse X Account charged: 1A01            2J01            2H01             
Claims Manager:  Concur/date 06-28-01  
Committee Action:            Council Action



BURNS  
06/01/01  


May 24, 2001  
Page Three

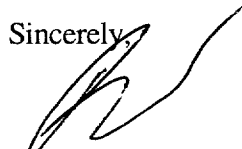
ENTERED - 6-4-01 - SB  
01L0343 - GWEN BURNS

RE: Crossing collision on February 11, 2001 at intersection of Capital Avenue and McDonough Boulevard

Dear Sirs and Madams:

This is to give you notice that my client, Jackie Phifer, was seriously injured on February 11, 2001 when he was hit by a Norfolk Southern train at the intersection of Capital Avenue and McDonough Boulevard. The intersection was not properly designed. I have enclosed a copy of the accident report for your convenience. Please direct all inquiries to the undersigned.

Sincerely,



Brad W. Thomas

BWT:ldf

01-R-1061

RCS# 2995  
7/16/01  
2:24 PM

Atlanta City Council

Regular Session

CONSENT

Pages 1 through 16

ADOPT

YEAS: 13  
NAYS: 0  
ABSTENTIONS: 0  
NOT VOTING: 1  
EXCUSED: 0  
ABSENT 2

SEE ATTACHED LISTING OF  
ITEMS ADOPTED/ADVERSED  
ON CONSENT AGENDA

B McCarty	Y Dorsey	Y Moore	Y Thomas
Y Starnes	Y Woolard	Y Martin	Y Emmons
Y Bond	B Morris	Y Maddox	Y Alexander
Y Winslow	Y Muller	Y Boazman	NV Pitts

ITEM (S) REMOVED FROM  
CONSENT AGENDA

01-O-0992 01-R-1108  
01-O-0710 01-R-1041  
01-O-0711 01-R-1042  
01-O-1089 01-R-1043  
01-O-0995 01-R-1065

CONSENT

**ITEMS ADOPTED  
ON CONSENT  
AGENDA**

1. 01-O-1091
2. 01-O-0722
3. 01-O-0855
4. 01-O-0890
5. 01-O-0891
6. 01-O-0980
7. 01-O-0924
8. 01-O-1086
9. 01-O-1090
10. 01-O-0731
11. 01-O-0917
12. 01-R-1013
13. 01-R-1014
14. 01-R-1015
15. 01-R-1016
16. 01-R-1007
17. 01-R-1009
18. 01-R-1012
19. 01-R-1005
20. 01-R-1006
21. 01-R-1011
22. 01-R-1109
23. 01-R-1017
24. 01-R-1077
25. 01-R-1080
26. 01-R-1019
27. 01-R-1020
28. 01-R-1021
29. 01-R-1022
30. 01-R-1023
31. 01-R-1024
32. 01-R-1025
33. 01-R-1026
34. 01-R-1027
35. 01-R-1028
36. 01-R-1107

**ITEMS ADVERSED  
ON CONSENT  
AGENDA**

37. 01-R-1029
38. 01-R-1030
39. 01-R-1031
40. 01-R-1032
41. 01-R-1033
42. 01-R-1034
43. 01-R-1035
44. 01-R-1036
45. 01-R-1037
46. 01-R-1038
47. 01-R-1039
48. 01-R-1040
49. 01-R-1044
50. 01-R-1045
51. 01-R-1046
52. 01-R-1047
53. 01-R-1048
54. 01-R-1049
55. 01-R-1050
56. 01-R-1051
57. 01-R-1052
58. 01-R-1053
59. 01-R-1054
60. 01-R-1055
61. 01-R-1056
62. 01-R-1057
63. 01-R-1058
64. 01-R-1059
65. 01-R-1060
66. 01-R-1061
67. 01-R-1062
68. 01-R-1063
69. 01-R-1064
70. 01-R-1066
71. 01-R-1067
72. 01-R-1068

**ITEMS ADVERSED  
ON CONSENT  
AGENDA**

73. 01-R-1069
  74. 01-R-1070
  75. 01-R-1071
  76. 01-R-1072
  77. 01-R-1073
  78. 01-R-1104
-